

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SMAIL COMPANY, INC.,

Plaintiff,

v.

LIBERTY MUTUAL AUTO AND HOME
SERVICES, LLC,

Defendant.

Civil Action No. 2:23-cv-2056

Hon. William S. Stickman IV

Hon. Patricia L. Dodge

ORDER OF COURT

Plaintiff Smail Company, Inc. (“Plaintiff”) commenced this action in October 2023 in the Court of Common Pleas of Westmoreland County by filing a complaint against Defendant Liberty Mutual Auto and Home Services, LLC (“Defendant”) bringing claims of unfair competition (Count One), unjust enrichment (Count Two), breach of contract (Count Three) and bad faith under 42 Pa. C.S. § 8371 (Count Four). Defendant removed this case on the basis of diversity jurisdiction (ECF No. 1), and then filed a Motion to Dismiss Plaintiff’s Complaint (ECF No. 7). After the conclusion of briefing, the Honorable Magistrate Judge Patricia L. Dodge issued a Report and Recommendation that the motion be granted in part and denied in part. (ECF No. 14). Objections were filed by Defendant (ECF No. 15), and then Plaintiff filed a Memorandum of law in Opposition to Defendant’s Objections to the Magistrate Recommendation (ECF No. 16).

Objections to a magistrate judge’s disposition of a dispositive matter are subject to *de novo* review before the district judge. 28 U.S.C. § 636(b)(1)(B)-(C); Fed. R. Civ. P. 72(b)(3). The reviewing district court must make a *de novo* determination of those portions of the

magistrate judge's report and recommendation to which objections are made. *Id.* Following *de novo* review, "[t]he district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions." Fed. R. Civ. P. 72(b)(3).

Upon review of Magistrate Judge Dodge's Report and Recommendation, the objections, response to the objections, and the Court's *de novo* review of the record in this matter, IT IS HEREBY ORDERED that Defendant's objections (ECF No. 15) to Magistrate Judge Dodge's Report and Recommendation are OVERRULED. The Court has exercised its *de novo* review and concurs with Magistrate Judge Dodge's thorough analysis and her legal conclusions. It has independently reached the same legal conclusions for the same reasons expressed in the comprehensive Report and Recommendation. Therefore, the Court hereby APOPTS Magistrate Judge Dodge's Report and Recommendation (ECF No. 14) as its Opinion.

AND NOW, this 29 day of April 2024, IT IS HEREBY ORDERED that Defendant Liberty Mutual Auto and Home Services, LLC's Motion to Dismiss Plaintiff's Complaint (ECF No. 7) is GRANTED IN PART AND DENIED IN PART. The motion is GRANTED as follows:

1. Count One is dismissed with prejudice.¹

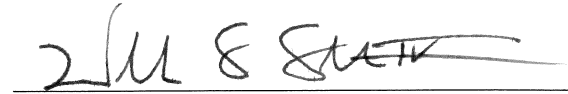
¹ The Court concurs with Magistrate Judge Dodge that amendment of this claim would be futile. *See In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1434 (3d Cir.1997) (a court may decide to deny leave to amend for reasons such as undue delay, bad faith, dilatory motive, prejudice, and futility); *see also* 3 James Wm. Moore et al., *Moore's Federal Practice* ¶ 15.15 (3d ed. 2024) ("An amendment is futile if it merely restates the same facts as the original complaint in different terms, reasserts a claim on which the court previously ruled, fails to state a legal theory, or could not withstand a motion to dismiss.").

2. Counts Three and Four are dismissed without prejudice with leave to amend.

Amended Complaint due by **May 17, 2024**.

The motion is DENIED as to Count Two.

BY THE COURT:

A handwritten signature in black ink, appearing to read "W S Stickman IV", written over a horizontal line.

WILLIAM S. STICKMAN IV
UNITED STATES DISTRICT JUDGE